

In the Matter of Merchant Mariner's Document No. Z-254110 and all
other Seaman Documents
Issued to: Mario H. Rechany

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1338

Mario H. Rechany

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 14 April 1961, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as Tourist Class Assistant Purser on board the United States SS INDEPENDENCE under authority of the document above described, Appellant did:

"*** on or about 0200 on 10 August 1960, while said vessel was at sea, wrongfully open with a pass key, the door to passenger stateroom no. 525, then occupied by a woman passenger, Mrs. Juanita G. Pierre."

A second specification charging that Appellant entered the stateroom on that occasion was dismissed by the Examiner.

At the hearing Appellant, represented by counsel, entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence testimony of a number of witnesses.

In defense, Appellant offered in evidence testimony of several witnesses and testified on his own behalf.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and one specification had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of one month not to be effective unless a further charge was proved against him within a period of six months.

FINDINGS OF FACTS

The person charged was aboard the SS INDEPENDENCE as Senior Assistant Purser by authority of his aforesaid document. At 2230 on the evening of 9 August 1960, he joined a party of Spanish-speaking people in one of the ship's lounges (Appellant, R.160). Shortly thereafter, he requested and obtained permission from those present to invite a Spanish speaking woman, Mrs. Juanita G. Pierre, whom he knew to be rooming alone, to join them. Accordingly, the Person Charged left the group about 2300 and went to Mrs. Pierre's stateroom.

Appellant knocked at the door and there was no answer. After knocking a second time, he heard noises. Appellant knocked a third time and then heard a sound like a door closing. Thereupon, Appellant unlocked the door with his passkey and opened the door to the extent of his right arm. Appellant saw that Mrs. Pierre was in bed (R.177) and invited her to the party. When she declined the invitation, Appellant closed the door and rejoined the party.

It was later learned that another crewman was inside the room and concealed himself in the clothing closet upon hearing someone knock at the door. The crewman inside the room testified at the hearing as did the woman by deposition, both as Government witnesses. The Examiner disregarded the testimony of both witnesses when it was disclosed that the crewman, after testifying in New York, went to California and discussed his testimony with Mrs. Pierre prior to her deposition, notwithstanding the Examiner's instruction to discuss his testimony with noone.

BASES OF APPEAL

1. The decision is contrary to the weight of the evidence. This was a proper exercise of judgment by Appellant and not a moral issue.

2. The testimony of the woman and her visitor was so permeated with fraud and perjury as to render the entire proceeding null and void.

3. The defense has shown that Appellant's conduct was not wrongful because he opened the door to determine whether Mrs. Pierre was safe.

4. The Examiner's finding that the incident took place at 2300 rather than at 0200 as stated in the specification is another indication of the erroneous and unfair way of handling this matter.

Previous record: none.

APPEARANCE: Messrs. Zwerling & Zwerling, 160 Broadway, New York

38, N.Y. Irving Zwerling, Esq., of Counsel.

OPINION

The above findings of fact concerning the alleged offense are supported by Appellant's testimony. Since he states that the incident occurred about 2300 on 9 August 1960 (R.160, 161), I fail to see any indication of error or unfairness in findings which deviate from the specification in this respect.

The Examiner adequately disposed of the matter pertaining to the testimony given by Mrs. Pierre and the seaman in her stateroom at the time of this incident.

The primary issue is whether Appellant acted "wrongfully" in that he opened the door to invite Mrs. Pierre to a party or whether his conduct was justified because of concern for her safety. Based on Appellant's own testimony, the latter factor was given secondary, if any, consideration when he opened the door to the stateroom (R. 208, 213). This testimony given on cross-examination casts strong doubt on the accuracy of Appellant's testimony that he first asked Mrs. Pierre if she was "all right" (R. 165). In further support of the conclusion that Appellant's primary motive was to issue a social invitation, his testimony shows that his claimed concern for the woman's health or safety was not mentioned when he discussed the matter with Mrs. Pierre (R.178-9), the Staff Captain (R. 176), the Chief Purser (R. 176), or in a written statement given to the Staff Captain (R. 202, 203). It was not until the hearing that this reason for opening the door was given.

It is my opinion that the record contains other substantial evidence, in addition to Appellant's testimony, that Appellant was motivated by the desire to invite Mrs. Pierre to the Party. This was not a legitimate purpose for which to use a passkey to open a passenger's stateroom door. Hearing some indefinite noises and a sound like a door closing did not constitute an emergency which justified the opening of the door. If Appellant had sincerely felt otherwise, it is unlikely that he would not have done more than remain at the door when Mrs. Pierre appeared to be "(Appellant, R. 166).

No element of moral turpitude is considered to be involved in this case.

ORDER

The order of the Examiner dated at New York, New York, on 14 April 1961, is AFFIRMED.

E.J.ROLAND
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 6th day of September 1962.